

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARTY PAUL, an individual; and
BRIAN BUSKIRK, an individual,

Plaintiffs,

v.

RBC CAPITAL MARKETS, LLC, a
Minnesota limited liability company;
ROYAL BANK OF CANADA, a
Canadian corporation; and ROYAL
BANK OF CANADA US WEALTH
ACCUMULATION PLAN, an employee
benefit plan,

Defendants.

No. 3:16-cv-05616-RBL

STIPULATED MOTION AND
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that



are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (1) plaintiffs’ bank, brokerage, or other confidential financial statements; (2) personally identifiable information (Social Security numbers, private contact information, and the like); (3) plaintiffs’ personnel files; (4) defendants’ proprietary or sensitive business information, including material related to defendants’ practices and strategies concerning the recruitment, retention, and compensation of its employees, trade secrets, confidential financial information, or other strategically sensitive information.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a

1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the information for
8 this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
11 parties agree that a particular document or material produced is for Attorney’s Eyes Only
12 and is so designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication
18 of confidential material, provided that counsel for the party retaining the copy or imaging
19 service instructs the service not to disclose any confidential material to third parties and to
20 immediately return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
23 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
24 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 confidential material must be separately bound by the court reporter and may not be
26 disclosed to anyone except as permitted under this agreement;

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or
4 discussing or referencing such material in court filings, the filing party shall confer with the
5 designating party to determine whether the designating party will remove the confidential
6 designation, whether the document can be redacted, or whether a motion to seal or
7 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures
8 that must be followed and the standards that will be applied when a party seeks permission
9 from the court to file material under seal.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this agreement
13 must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The designating party must designate for protection only those parts
15 of material, documents, items, or oral or written communications that qualify, so that other
16 portions of the material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber or delay the case development process or to impose unnecessary
21 expenses and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it
23 designated for protection do not qualify for protection, the designating party must promptly
24 notify all other parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated

1 or ordered, disclosure or discovery material that qualifies for protection under this
2 agreement must be clearly so designated before or when the material is disclosed or
3 produced.

4 (a) Information in documentary form: (e.g., paper or electronic documents
5 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page
7 that contains confidential material. If only a portion or portions of the material on a page
8 qualifies for protection, the producing party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial or trial proceedings:
11 the parties must identify on the record, during the deposition, hearing, or other proceeding,
12 all protected testimony, without prejudice to their right to so designate other testimony after
13 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
14 deposition transcript, designate portions of the transcript, or exhibits thereto, as
15 confidential.

16 (c) Other tangible items: the producing party must affix in a prominent place
17 on the exterior of the container or containers in which the information or item is stored the
18 word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
19 protection, the producing party, to the extent practicable, shall identify the protected
20 portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
22 to designate qualified information or items does not, standing alone, waive the designating
23 party’s right to secure protection under this agreement for such material. Upon timely
24 correction of a designation, the receiving party must make reasonable efforts to ensure that
25 the material is treated in accordance with the provisions of this agreement.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation
2 of confidentiality at any time. Unless a prompt challenge to a designating party's
3 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
4 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
5 does not waive its right to challenge a confidentiality designation by electing not to mount a
6 challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any
8 dispute regarding confidential designations without court involvement. Any motion
9 regarding confidential designations or for a protective order must include a certification, in
10 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet
11 and confer conference with other affected parties in an effort to resolve the dispute without
12 court action. The certification must list the date, manner, and participants to the conference.
13 A good faith effort to confer requires a face-to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality
16 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
17 burden of persuasion in any such motion shall be on the designating party. Frivolous
18 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
19 expenses and burdens on other parties) may expose the challenging party to sanctions. All
20 parties shall continue to maintain the material in question as confidential until the court
21 rules on the challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as
26 "CONFIDENTIAL," that party must:

1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order
5 is subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
10 confidential material to any person or in any circumstance not authorized under this
11 agreement, the receiving party must immediately (a) notify in writing the designating party
12 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
13 the protected material, (c) inform the person or persons to whom unauthorized disclosures
14 were made of all the terms of this agreement, and (d) request that such person or persons
15 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
16 Exhibit A.

17 9. PRODUCTION OF PRIVILEGED OR OTHERWISE
18 PROTECTED MATERIAL

19 The parties have conferred on an appropriate non-waiver order under Fed. R. Evid.
20 502, and hereby stipulate and petition the Court to enter the following:

21 9.1 **No Waiver by Disclosure.** This Order is entered pursuant to Rule 502(d) of
22 the Federal Rules of Evidence. Subject to the provisions of this Order, if a party or
23 subpoenaed nonparty (the “Disclosing Party”) discloses information in connection with the
24 pending litigation that the Disclosing Party thereafter claims to be privileged or protected
25 by the attorney-client privilege, work product protection, or any other privilege (“Protected
26 Information”), the disclosure of that Protected Information will not constitute or be deemed
a waiver or forfeiture – in this or any other action – of any claim of privilege or work

1 product protection the Disclosing Party would otherwise be entitled to assert with respect to
2 the Protected Information and its subject matter.

3 **9.2 Notification Requirements; Best Efforts of Receiving Party. A**

4 Disclosing Party must promptly notify the party receiving the Protected Information (“the
5 Receiving Party”), in writing, that it has disclosed that Protected Information without
6 intending a waiver by the disclosure. Upon such notification, the Receiving Party must –
7 unless it contests the claim of attorney-client privilege or work product protection in
8 accordance with Paragraph 9.3 – promptly (i) notify the Disclosing Party that it will make
9 best efforts to identify and return, sequester, or destroy (or in the case of electronically
10 stored information, delete) the Protected Information and any reasonably accessible copies
11 it has and (ii) provide a certification that it will cease further review, dissemination, and use
12 of the Protected Information. Within ten (10) business days of receipt of the notification
13 from the Receiving Party, the Disclosing Party must explain as specifically as possible why
14 the Protected Information is privileged.

15 **9.3 Contesting Claim of Privilege or Work Product Protection.** If the
16 Receiving Party contests the claim of attorney-client privilege or work product protection,
17 the Receiving Party must – within five (5) business days of receipt of the Disclosing Party’s
18 specific explanation for why the Protected Information is privileged referenced in the final
19 sentences of Paragraph 9.2 – move the Court for an Order compelling disclosure of the
20 information claimed as unprotected (a “Disclosure Motion”). As authorized by Fed. R. Civ.
21 P. 26(b)(5)(B), the Disclosure Motion, any response, reply, and supporting declarations
22 must be filed under seal and must not assert as a ground for compelling disclosure the fact
23 or circumstances of the disclosure. This provision of the Stipulated Protective Order
24 constitutes a “prior court order” under LCR 5(g)(2)(A) for sealing the documents described
25 in the preceding sentence. Pending resolution of the Disclosure Motion, the Receiving
26

1 Party must not use the challenged information in any way or disclose it to any person other
2 than those required by law to be served with a copy of the sealed Disclosure Motion.

3 9.4 **Stipulated Time Periods.** The parties may stipulate to extend the time
4 periods set forth in Paragraphs 9.2 and 9.3.

5 9.5 **Attorney's Ethical Responsibilities.** Nothing in this Order overrides any
6 attorney's ethical responsibilities to refrain from examining or disclosing materials that the
7 attorney knows or reasonably should know to be privileged and to inform the Disclosing
8 Party that such materials have been produced.

9 9.6 **Burden of Proving Privilege or Work-Product Protection.** The
10 Disclosing Party retains the burden – upon challenge pursuant to Paragraph 9.3 – of
11 establishing the privileged or protected nature of the Protected Information.

12 9.7 **In camera Review.** Nothing in this Order limits the right of any party to
13 petition the Court for an *in camera* review of the Protected Information.

14 9.8 **Voluntary and Subject Matter Waiver.** This Order does not preclude a
15 party from voluntarily waiving the attorney-client privilege or work product protection.
16 The provisions of Federal Rule of Evidence 502(a) apply when the Disclosing Party uses or
17 indicates that it may use information produced under this Order to support a claim or
18 defense.

19 9.9 **Review.** Nothing contained herein is intended to or shall serve to limit a
20 party's right to conduct a review of documents, ESI, or information (including metadata)
21 for relevance, responsiveness, and/or segregation of privileged and/or protected information
22 before production.

23 9.10 **Rule 502(b)(2).** The provisions of Federal Rule of Evidence 502(b)(2) are
24 inapplicable to the production of Protected Information under this Order.
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26

10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

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1 DATED: November 4, 2016

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3 **YARMUTH WILSDON PLLC**

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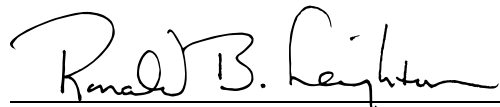
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Attorneys for Defendants RBC Capital
Markets, LLC, Royal Bank of Canada, and
Royal Bank of Canada US Wealth
Accumulation Plan

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21
22 DATED this 7th day of November, 2016.

23
24 

25 Ronald B. Leighton

26 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full address], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on
_____ [date] in the case of Paul, et al. v. RBC Capital Markets, LLC, et al., Case
No. 3:16-cv-05616-RBL. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____